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Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm. 6222
Silver Spring, MD 20993-0002

Attention: Beverly Friedman

The attached application for patent term extension of U.S. Patent No. 5,451,233 was filed on July 25, 2008, under 35 U.S.C. § 156. Please note that this patent expires on October 29, 2008.

The assistance of your Office is requested in confirming that the product identified in the application, XIENCE™ V EECSS (everolimus eluting coronary stent system), has been subject to a regulatory review period within the meaning of 35 U.S.C. § 156(g) before its first commercial marketing or use and that the application for patent term extension was filed within the sixty-day period beginning on the date the product was approved.[1] Since a determination has not been made whether the patent in question claims a product which has been subject to the Federal Food, Drug and Cosmetic Act, or a method of manufacturing or use of such a product, this communication is NOT to be considered as notice which may be made in the future pursuant to 35 U.S.C. § 156(d)(2)(A).

Our review of the application to date indicates that the subject patent would be eligible for extension of the patent term under 35 U.S.C. § 156.

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[1]The filing of the application on July 25, 2008, was timely, given the NDA approval date of July 2, 2008. Applicant, however, misidentified at section 5 on page 3 of the application the last day the application may be submitted as August 31, 2008, pursuant to 37 C.F.R. § 1.740(a)(5). Under both 35 U.S.C. § 156(d)(1) and 37 C.F.R. § 1.720(f), a PTE applicant has sixty days to submit a PTE application, with the first day of that sixty-day period beginning on the FDA approval date. The absolute deadline for filing the present PTE Application is thus August 30, 2008, or sixty days from July 2, 2008, starting the count of the sixty-day period on July 2, 2008. The Federal Circuit in *Unimed, Inc. v. Quigg*, 12 USPQ2d 1644, 1646, made clear that "section 156(d)(1) admits of no other meaning than that the sixty-day period begins on the FDA approval date."

Inquiries regarding this communication should be directed to the undersigned at (571) 272-7755 (telephone) or (571) 273-7755 (facsimile).

Mary C. Till

Mary C. Till
Legal Advisor
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